

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

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|-----------------------|---|---|
| ROBERT BOSTON, |) | |
| |) | |
| Petitioner, |) | |
| |) | Civ. Action No. 04-51 (Erie) |
| vs. |) | |
| |) | Judge Sean J. McLaughlin |
| JOHN ASHCROFT, |) | Magistrate Judge Susan Paradise Baxter |
| |) | |
| Respondent. |) | filed electronically |

**RESPONDENT’S AMENDED SURREPLY IN SUPPORT OF
OBJECTIONS TO REPORT AND RECOMMENDATION**

AND NOW, comes Respondent, by his attorneys, Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania, and Christy Wiegand, Assistant U.S. Attorney for said district, and respectfully files this Amended Surreply in support of his Objections to the Report and Recommendation (“R & R”).

1. In his Response to Respondent’s Objections, Petitioner argues that the Objections were untimely as they were filed with the Court on August 11, 2005.

2. The docket clerk’s entry on PACER notes that Objections to the R & R were due by 8/10/2005 – ten days from the day the R & R was entered. However, Magistrate Judge Baxter, in the R & R, ordered that the parties be allowed “ten (10) days from the date of service to file written objections to this Report and Recommendation.” Report and Recommendation, at 6 (emphasis added). This time frame – running from the date of service – comports with 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.1.4(B) of the Local Rules for Magistrates.

3. Respondent was served electronically with the Magistrate’s R & R on July 28, 2005.¹

¹In his original Surreply, filed August 25, 2005, Respondent erroneously stated that he was served with the R & R on August 28, 2005; however the correct date of service is July 28, 2005. Respondent apologizes for any confusion this error may have caused.

Accordingly, Respondent's Objections were due no later than August 11, 2005, the day they were, indeed, filed and served.

WHEREFORE, for the foregoing reasons, Respondent respectfully requests that the Court consider his Objections to the Report and Recommendation as timely-filed, and, for the reasons set forth in those Objections, further respectfully requests that the Petition be denied.

Respectfully submitted,

MARY BETH BUCHANAN
United States Attorney

s/ Christy Wiegand
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CERTIFICATE OF SERVICE

I hereby certify that I have served this date a copy of the within *Respondent's Amended Surreply in Support of Objections to Report and Recommendation*, by mail or electronic filing, upon the following:

Robert Boston
Reg. No. 05505-089
FCI McKean
P.O. Box 8000
Bradford, PA 16701

s/ Christy Wiegand
CHRISTY WIEGAND
Assistant United States Attorney

Date: August 31, 2005